

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

GEORGE LOUIS PEREZ, JR.,

No. C-06-02585 EDL

Plaintiff,

**ORDER DENYING WITHOUT
PREJUDICE DEFENDANTS' MOTION
TO DISMISS**

v.

VESSEL ASSIST, et al.,

Defendants.

According to the complaint in this case, on July 20, 2004, Plaintiff George Perez purchased insurance from Defendant Boat US Towing Services to have Plaintiff's boat towed because the boat had run aground in the bay. Plaintiff alleges that on the same day, he made arrangements to have Defendant Vessel Assist, which is owned by Defendant Phil Delanoe, tow the boat. Plaintiff alleges that Defendant Gary Burks works for Vessel Assist and is the captain who towed the boat. According to Plaintiff, the boat was towed and it sank into the bay.

On September 26, 2006, Specially Appearing Defendants Vessel Assist, Phil Delanoe, Gary Burks and Boat US Towing Services filed a motion to dismiss on the ground that the summons and complaint were not served in compliance with Federal Rule of Civil Procedure 4(m), or in the alternative, that the service was insufficient. Plaintiff opposed this motion, arguing that service was proper and timely. The Court held a hearing on November 14, 2006.

For the reasons stated in Defendants' motion to dismiss and at the hearing, the Court holds that Plaintiff has not properly served Defendants. The time for service of the summons and complaint, however, can be extended pursuant to Rule 4(m) upon the Court's determination of good cause. See Fed. R. Civ. P. 4(m); In re Sheehan, 253 F.3d 507, 512 (9th Cir. 2001) (factors showing

1 good cause include that: (1) the party to be served received actual notice of the lawsuit; (2)
2 defendant would suffer no prejudice; and (3) plaintiff would be severely prejudiced if his complaint
3 were dismissed). Applying the Sheehan factors in this case, the Court finds good cause to give
4 Plaintiff one more chance to properly serve Defendants. Accordingly, Plaintiff shall have 45 days
5 from the date of this order to complete service. Defendants' motion to dismiss is denied without
6 prejudice.

7 A further case management conference is scheduled for February 13, 2007 at 10:00 a.m.
8 The parties shall file a joint case management conference statement no later than February 6, 2007.

9 **IT IS SO ORDERED.**

10 Dated: November 14, 2006

Elizabeth D. Laporte

ELIZABETH D. LAPORTE
United States Magistrate Judge